

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2016

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No. 29172 of 2016

and

W.M.P.Nos.25226 and 25227 of 2016

Shahid Husain
CISF No.944380064

.. Petitioner

Vs.

1.The Director General
Central Industrial Security Force
No.13, CGO Complex
Lodhi Road
New Delhi-110 003.

2.The Deputy Inspector General
Central Industrial Security Force
Department of Atomic Energy
Zonal HQrs.
Post-ECIL
Hyderabad-62.

3.The Senior Commandant
Central Industrial Security Force
CISF Unit - DAE Kalpakkam
Post - Kalpakkam
Kanchipuram- 603 102.

4.The Assistant Commandant/Adm.
Central Industrial Security Force
CISF Unit - DAE Kalpakkam
Post-Kalpakkam
Kanchipuram-603 102.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 2nd respondent, dated 15.08.2016 in CISF DAE Zonal HQ Hyderabad Posting Order No.41/2016 in his Letter No.E-38014/Transfer Order/DAE/GA1/2016/6183, dated 15.08.2016 and the Officer Order issued by the 4th respondent Letter No.E-38014/Adm.I/DAE(K)/2016/4449, dated 15.08.2016 and the Movement Order No.E-38014/DAE(K) Adm.I/Estt/2016/2519, dated 15.08.2016, and quash the same and to direct the respondents to retain the petitioner

at DAE Kalpakkam under the respondents 3 and 4, till the end of academic year i.e., April, 2017.

For Petitioner	:Mr.M.Md.Ibrahim Ali
For Respondents	:Mr.B.Rabu Manohar
	Senior Counsel Government
	Panel Counsel

O R D E R

By consent, the Writ Petition is taken up and disposed of at the admission stage itself.

2. This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 2nd respondent, dated 15.08.2016 in CISF DAE Zonal HQ Hyderabad Posting Order No.41/2016 in his Letter No.E-38014/Transfer Order/DAE/GA1/2016/6183, dated 15.08.2016 and the Officer Order issued by the 4th respondent Letter No.E-38014/Adm.I/DAE(K)/2016/4449, dated 15.08.2016 and the Movement Order No.E-38014/DAE(K) Adm.I/Estt/ 2016/2519, dated 15.08.2016, and quash the same and to direct the respondents to retain the petitioner at DAE Kalpakkam under the respondents 3 and 4, till the end of academic year i.e., April, 2017.

3. The petitioner reported in CISF Unit DAE Kalpakam on 17.07.2014, on regular posting. He has completed 2 years and 1 month in DAE Kalpakkam. The 1st respondent, issued an posting order, dated 15.08.2016, wherein, the petitioner was transferred and directed to report at CISF Unit, HWP Manuguru, without availing joining time. Aggrieved against the transfer order, the present Writ Petition has been filed.

4. Mr.M.Md.Ibrahim Ali, the learned counsel for the petitioner would submit that the transfer order was passed without following CISF FHQrs.New Delhi Circular No.53/2011, dated 20.12.2011, in which, in Para-XII, the tenure of posting has been fixed in a Unit/Station as 3 years, whereas, the petitioner has completed only 2 years and 1 month in the present unit. The learned counsel would further submit that in Para-XIII there is a provision that NGOs will be permitted an extension in his/her present unit for one year if his/her ward is studying in 10th or 12th class in the current academic year. He would further submit that in Para-12(viii) of the said Circular, there is a provision that in case of wards studying in class 10th and 12th in the current academic year, a service man may be retained in a unit for more than 3 years. Relying on these provisions, the learned counsel would submit that admittedly, the petitioner's son is studying 10th studying in the Kendriya Vidyalaya-1, Kalpakkam, and therefore, as per the said Circular, the petitioner is entitled for an extension in the present Unit for

one year, as his son is studying in 10th standard in the current academic year. He would further add that the grievance of the petitioner is that in the middle of the current academic year, if he is transferred, the studies of his son will be greatly affected and he will be put to much prejudice, especially, when in the transferred place the branch of the Kendriya Vidyalaya School, where the petitioner's son studying, is not available. The learned counsel for the petitioner undertakes before this Court that the petitioner is ready and willing to join in the transferred place after the completion of the current academic year i.e., April, 2017, so that his son will complete the 10th standard examination.

5. Mr.B.Rabu Manohar, learned Senior Central Government Panel Counsel, who took notice on behalf of the respondents, would submit that only due to operational and administrative exigency, especially, the petitioner being Sub-Inspector, whose service is necessary in that particular place, urgent transfer order has been passed. He would further contend that the family will not be disturbed because, the petitioner will be given the quarters and they can very well occupy the quarters, till the examination is over.

6. Heard both sides. I have considered the rival contentions.

7. It is relevant to refer to the CISF FHQrs.New Delhi Circular No.53/2011, issued under Letter No.E-38011/1/2011/Estt.II/2752, dated 20.12.2011, in which, guidelines for posting/transfer of CISF Personnel is given, and in Para-XII tenure of posting has been fixed in Unit/Station as 3 years. Further Para-XIII of the Circular specifically states that NGOs will be permitted an extension in his/her present unit for one year if his/her ward is studying in 10th or 12th class in the current academic year. In Para-XIII it is made clear that he/she will not be given extension in the next year on the ground of 2nd ward/wards studying in 10th or 12th in the subsequent year. This policy is applicable only for two living children and can be availed once for one child's education. In the said Circular, in Para-12 (viii) there is a provision that in case personnel are not willing for posting to their Home Zone either on the ground of children education, medical ground and compassionate ground etc., they may be allowed to continue in Out of Home Zone and change the Sector/Unit if they are posted in a particular Unit for more than 3 years except wards studying in class 10th and 12th in the current academic year. Thus, it is crystal clear that a service man may be retained in a unit for more than 3 years, if his wards studying in class 10th and 12th in the current academic year, whereas, the petitioner has completed only 2 years and 1 month in the unit. Merely because, there is an exceptional circumstances, on the ground of operational and

administrative exigency, the petitioner cannot be transferred, when he is in regular posting and the said Circular cannot be given a go-by.

8. Having regard to the fact that now we are in the end of August, 2016, apart from that, in the place where the petitioner was transferred, admittedly, there was no branch of Kendriya Vidyalaya School available, to enable the petitioner's son to continue his 10th standard, I am of the considered opinion that the petitioner shall be retained and permitted to continue duty at DAE Kalpakkam under the respondents 3 and 4 till the end of the current academic year. Suffice it to state that the petitioner shall be given the transfer order immediately after the current academic year is over, so as to enable the petitioner's son to complete the 10th standard examination. In the said Circular, in Para-XIII, it is further made clear that the extension in present unit for one year is applicable only for two living children and can be availed once for one child's education. The undertaking given by the petitioner that he is willing for transfer immediately on completion of 10th standard examination of his son is recorded.

9. The Writ Petition is disposed of with the above direction. It is made clear that the impugned transfer order, dated 15.08.2016, shall be kept in abeyance till the end of the current academic year, so as to enable the petitioner's son to complete the 10th standard examination. The connected Miscellaneous Petitions are closed. There shall be no order as to costs.

paa

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Director General
Central Industrial Security Force
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Lodgi Road
New Delhi-110 003.

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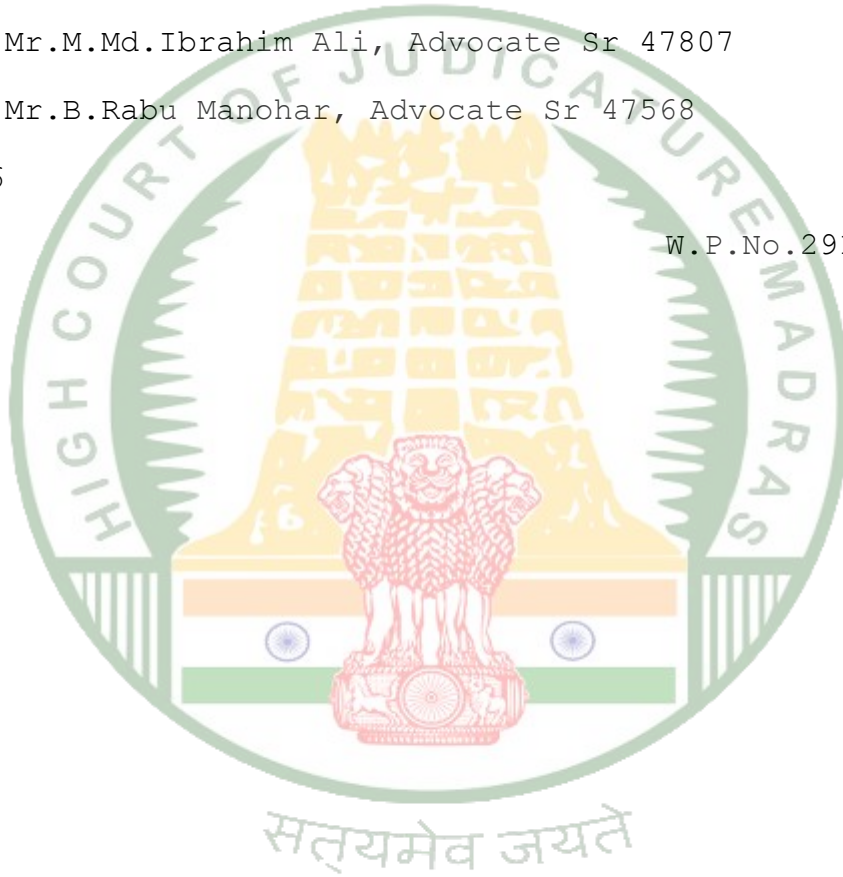
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CISF Unit - DAE Kalpakkam
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+ 1 cc to Mr.M.Md.Ibrahim Ali, Advocate Sr 47807

+ 1 cc to Mr.B.Rabu Manohar, Advocate Sr 47568

KR/31/8/16

W.P.No.29172 of 2016



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